IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

O R D E R

S.B. Criminal Misc. Petition No.277/2000

Bhoora Mal & Ors. vs. State of Rajasthan

Date of Order ::::: February 11,2009

Present

HON'BLE MR.JUSTICE BHANWAROO KHAN

None present for the petitioners
Mr. K.S.Chandel, P.P.

Petitioners were facing trial under Sections 147, 364/149, 302/149 and 201 IPC in the court of Sessions Judge, Jaipur District Jaipur. It seems that after recording the statements of the petitioners, the matter was fixed for defence evidence then on 13.7.1999 an application under Section 311 Cr.P.C. was moved on behalf of the petitioners for calling Shri Shrichand Chaudhary, the then Circle Officer and also Motbir Hanuman. The learned Sessions Judge, Jaipur District Jaipur by the order dated 16.8.1999 rejected the application observing that if the petitioners so interested they can produce these persons as defence witnesses. Being aggrieved of the order

of the learned Sessions Judge, Jaipur District, Jaipur the petitioners have filed the instant petition.

None appeared for the petitioners.

Heard learned P.P. and perused the impugned order and also the material available on the record of the case.

A perusal of the application reveals that the application was moved with the averments that Shri Shrichand Chaudhary, the then Circle Officer was present at the place of the occurrence and specific direction was given by him for conducting the investigation. Simultaneously in the said application it was also prayed that Hanuman son of Deva Ram was also another Motbir of Ex.P.8 to P.15 which have already been proved by producing another Motbir Pratap. The learned Trial Judge while going through the entire facts and circumstances of the case observed that Shri Shrichand Chaudhary nowhere was present as his presence is not available on the executed documents and simply by giving a direction for conducting investigation one cannot become a witness. It is for the prosecution to choose as

to which of the witnesses is to be examined and which of the witnesses is to be left over. When one of the motbirs has been examined either the prosecution or the court can drop the another motbir.

It is also pertinent to mention here that in defence till 27.10.1999 four witnesses were examined by the petitioners. The order dated 7.12.1999 reveals that an application was filed on behalf of the petitioners through their counsel with the averment that he is unable to start final arguments and that he does not want to lead evidence in defence. Thereafter on so many dates final arguments were not started on the one or the other grounds. Thus, it is clear that the application under Section 311 Cr.P.C. was moved with intention to delay the trial of the case.

In the facts of the case it seems that with an intention to delay the trial of the case, the application was filed. Therefore, the order of the learned Trial Judge is perfectly legal and no interference is required to be called for in the same by this Court in the exercise of inherent jurisdiction under Section 482 Cr.P.C.

Consequently, the misc. petition stands dismissed.

Office is directed to return the record to the concerned court i.e. learned Addl. Sessions Judge (Fast Track), Chomu, Jaipur District Jaipur immediately.

(Bhanwaroo Khan),J.

bairwa

S.B.Cr. Misc. Stay Application No.173/2000
in
S.B. Criminal Misc. Petition No.277/2000

Bhoora Mal & Ors. vs. State of Rajasthan

Date of Order ::::: February 11,2009

HON'BLE MR.JUSTICE BHANWAROO KHAN

None present for the petitioners
Mr. K.S.Chandel, P.P.

Since the main petition has been dismissed, this stay application also stands dismissed.

(Bhanwaroo Khan),J.

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